

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company)	Docket 10-0138
Proposal to establish Rider PORCB)	
(Purchase of Receivables with Consolidated Billing))	
And to Revise Other Related Tariffs)	

REPLY BRIEF ON REHEARING OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

On June 20, 2011, the Retail Energy Supply Association (“RESA”)¹, filed its Initial Brief on Rehearing in this proceeding. RESA files this Reply Brief on Rehearing in response to the Initial Briefs on Rehearing filed by the following parties: Commonwealth Edison Company (“ComEd”), the Illinois Competitive Energy Association (“ICEA”), the Commission Staff, Dominion Retail Inc. (“Dominion”), and the National Energy Marketers Association (“NEMA”).

With respect to the only issue in this proceeding—whether to reverse the Commission’s decision in the Amendatory Orders to utilize a single, blended uncollectibles rates for residential and non-residential customers—RESA, ICEA, and ComEd all agreed that that decision should be reversed and the Commission, on rehearing, should revert to its decision in its December 15, 2010 Order (“Commission’s Final Order”) in this proceeding to utilize separate uncollectible

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

rates for residential and eligible non-residential customers. The Commission Staff is neutral on this issue. Although difficult to comprehend, NEMA appears to be neutral on the issue as well. Only Dominion supports continuation of a single blended uncollectible rate.

II. RESPONSE TO ComEd

ComEd supports the use of separate uncollectible factors for residential and non-residential customers for the following reasons. Use of a single rate violates traditional ratemaking practices and principles of cost causation. (ComEd In. Br., p. 7) Use of a single uncollectible rate discourages the use of Rider PORCB to serve non-residential customers. (*Id.*) Use of a single uncollectible rate imposes increased costs on customers. (*Id.*, pp. 7-8) It also tilts the playing field against Retail Electric Suppliers (“RES”) relying on Rider PORCB to serve mass market retail electric customers. (*Id.*, p. 8) Finally, use of a single uncollectible rate forecloses an opportunity to study an alternative approach to that being used for the Ameren Illinois Companies. (*Id.*) RESA agrees with the arguments advanced by ComEd in support of the use of separate uncollectibles rates for residential and non-residential customers.

III. RESPONSE TO ICEA

ICEA also supports the use of separate uncollectibles factors for residential and non-residential customers for the following reasons. Use of a single uncollectible rate is consistent with the Memorandum of Understanding entered into by ComEd, RESA and ICEA. (ICEA In. Br., pp. 3-4) The use of separate uncollectible rates is in the best interests of all Illinois customers in ComEd’s service territory. (*Id.*, pp. 4-5) Use of separate uncollectible rates best comports with the language of the Public Utilities Act and the underlying policy that led to Rider PORCB. (*Id.*, pp. 5-6) ICEA also points out the flaws in the arguments of Dominion, the only

party supporting retention of the single uncollectible rate. (*Id.*, pp. 6-7) RESA generally agrees with the arguments advanced by ICEA in support of the use of separate uncollectibles rates for residential and non-residential customers.

IV. RESPONSE TO COMMISSION STAFF

The Commission Staff did not take a position on the only issue on rehearing in the original phase of this proceeding and is not advocating a position on rehearing. (Staff In. Br., p. 2) However, the Staff addressed arguments made by the other parties supporting and opposing the two positions taken on rehearing. Initially, RESA notes that the Staff erred in stating the issue on rehearing when it claims that the Commission found in its Final Order in this proceeding—the Order dated December 15, 2010—in favor of a single blended uncollectible rate. (*Id.*) On the contrary, the Commission’s Final Order accepted ComEd’s proposal of separate uncollectible rates for residential and non-residential customers. As directed by the Commission’s Final Order, ComEd’s compliance filing reflected separate uncollectible rates for residential customers (2.239%) and non-residential customers (0.774%). The Commission accepted ComEd’s compliance filing. (RESA Ex. 1.0 on Rehearing, p. 5) The Commission reversed this decision in its Amendatory Order, dated February 9, 2011, in this proceeding and its Order upon Emergency Motion for Clarification, dated February 23, 2011 in this proceeding (hereinafter referred to as the “Amendatory Orders”). (*Id.*, p. 1) It is the reversal of this position that is the subject of this rehearing.

The Staff addresses Dominion’s five arguments in support of its efforts to retain the single uncollectible rate. Basically Staff finds one of those arguments to be the “strongest”—the argument that with the Commission having adopted the 50 cent per bill fixed charge, moving

away from the single uncollectibles rate would further harm RESs that are focused on residential customers—and rejects the remaining arguments. (Staff In. Br., pp. 3-9) However, Dominion’s “strongest” argument was completely refuted in RESA’s Initial Brief on Rehearing, which demonstrated that the Commission’s decision to accept ComEd’s proposal of a fixed 50 cent per bill charge to recover implementation costs for Rider PORCB was a correct decision on the merits. The fact that the Commission accepted the evidence of ComEd, RESA, and ICEA in support of the 50 cent per bill fixed charge over the evidence of the Staff and Dominion supporting a percentage rate for recovery of implementation costs does not justify rejecting the position of ComEd, RESA and ICEA on rehearing on the separate and distinct issue of the appropriate uncollectible rate.

The Commission adopted the use of the 50 cent per bill fixed charge (which is not an issue on rehearing, but is an issue in Dominion’s appeal from the Commission’s Final Order) after a careful analysis. (Commission’s Final Order, pp. 24-25) In particular, the Commission found:

Under the fixed charge approach, RESs are billed a fixed charge for what are fixed start-up and implementation costs that do not change with usage. In this way, all RESs are treated fairly and RESs serving high-use customers are not forced to subsidize RESs serving low-use customers. (Commission’s Final Order, p. 24)

The Commission, after its careful analysis, concluded as follows:

Therefore, we conclude that ComEd’s proffered \$0.50 cent, per-bill, fixed charge is in accord with the General Assembly’s articulated purpose, which is contained in 220 ILCS 5-16-118(a), and is cited above. We are of the opinion that a fixed charge will serve to promote the development of an effectively competitive and fair electricity market because, according to record evidence, it provides the **best opportunity to maximize participation for both residential and commercial customers** [emphasis added]. (*Id.*, p. 25)

The Commission clearly adopted the 50 cent per bill fee because the evidence in this case supported a finding that it reflected the actual costs of providing the bill, which has no relationship to the amount of the actual bill itself (“costs that do not change with usage”). Consistent with this reasoning, it is appropriate for the Commission to continue the implementation of both the 50 cent per bill fee as well as separate discount rates for residential and non-residential customers. RESA believes that cost causation principles support both findings and should be adopted by the Commission in this case.

The Staff’s Initial Brief on Rehearing also addresses the arguments in support of separate uncollectibles rates for residential and non-residential customers. (Staff In. Br., pp. 9-16) Staff finds that the argument that the use of separate uncollectibles rates is in line with cost causation principles is the “strongest argument in favor of using separate uncollectibles charges”. (*Id.*, p. 10) While Staff does not necessarily accept the remaining arguments, the soundness of these arguments is addressed in this Reply Brief on Rehearing in response to the arguments set forth in Dominion’s Initial Brief on Rehearing.

V. RESPONSE TO DOMINION

Dominion offers five arguments in support of its attempt to retain a single uncollectible rate under Rider PORCB. However, none of the five arguments has any merit and each is self-serving—basically an attempt by Dominion to retain an uncollectible rate that will offer it a subsidy whenever it finally decides to enter the residential competitive market in Illinois.

First, Dominion claims that the blended single uncollectibles rate reflects the cost of service more closely. (Dominion In. Br., pp. 2-7) In support of this claim, Dominion notes that ComEd proposed a single uncollectible rate for its eligible non-residential customers despite the fact that

it could break down that rate into three sub-groups (watt hour, small load delivery, and medium load delivery) and those three sub-groups have very different uncollectible rates. (*Id.*, p. 3)

Dominion's argument uses a lack of cost causation customer class granularity as support for an even greater departure from historical cost causation. Dominion's argument fails because it misses the basic point that ComEd proposed to set the uncollectible rate by applying the same supply-related uncollectible cost factors set forth in its Rider UF that it applies to its own supply charges under Rate BES, Basic Electric Service, which is ComEd's fixed price bundled electric service tariff. (ComEd Ex. 1.0, pp. 14-15). It is appropriate to use only these two discount rates because it maintains consistency between bundled (Rider UF) and unbundled (Rider PORCB) tariff services. Either of Dominion's two arguments (greater granularity through greater cost breakdown or blended residential and non-residential discount rates) would create inconsistencies between the factors contained in these two tariffs.

Dominion basically claims that residential customers served under Rider PORCB will have a lower uncollectibles rate than residential customers served under Rate BES while non-residential customers served under Rider PORCB will have a higher uncollectibles rate than non-residential customers served under Rate BES and therefore a "blended rate may best reflect the cost of service". There is simply no evidentiary support for this claim. Dominion has not, and could not given the recent implementation of Rider PORCB, demonstrated that there is a difference in uncollectibles rates between customers served under Rider PORCB and those served under Rate BES. The conjecture of Dominion's witness is quite simply not a basis for a sound regulatory decision.

Dominion argues that the lack of an "all-in" provision for non-residential customers under Rider PORCB will allow RESs to "cherry-pick" customers and implies that Commission Staff

witness Clausen agrees with Dominion on this issue. In fact, the Commission Staff does not agree that Dominion's claim of cherry-picking would provide sufficient justification for the Commission to conclude that the uncollectible factor in a single blended rate would be more accurate for non-residential customers on Rider PORCB. (Staff In. Br., pp. 6-8) Moreover, Dominion stands the concept of cherry-picking on its head. The term is generally used to identify a practice of enrolling only the best customers—here Dominion uses the term to suggest that RESs will select the worst customers. In support of its cherry picking argument, Dominion refers to its own experience with selling natural gas in the service territory of Northern Illinois Gas Company ("NI-Gas"). (Dominion In. Br., p. 5) However, Dominion compares its uncollectible rate in Ni-Gas' service territory to ComEd's uncollectible rates. The only thing that Dominion seems to prove with this inapt comparison is that gas is not electricity and Dominion sells gas, not electricity, in Illinois.

Second, Dominion claims that because residential customers have lower usage than the average non-residential customer, they—due to the 50 cent per bill fixed charge to recover Rider PORCB implementation costs—already pay an effective discount rate that is higher than non-residential customers. (*Id.*, pp. 7-10) This claim was already refuted above in response to the Commission Staff's Initial Brief. Since the 50 cent per bill fixed charge is intended to recover implementation costs and such costs are not usage sensitive—it costs the same if a bill is for \$1 or \$1 million—Dominion's claim is simply irrelevant. It is noteworthy that the argument Dominion employs to compare, and collaterally attack, the Commission's decision to adopt a 50 cent per bill fee would also apply to *any* fixed per-bill fee – even one cent – because that fee would be compared to the relative size of the customer's bill and would *always* be higher for customers with lower usage. Thus Dominion's argument, if adopted, would essentially deprive

the Commission of the ability to *ever* use a fixed fee to recover implementation costs that are not usage sensitive because, when a fixed cost is compared to a usage-sensitive portion of the customer's bill, it incorrectly appears to give a "wrong" result. RESA believes that it is the analysis, not the result, which is wrong. Thus, Dominion's argument on this point is not well taken.

Third, Dominion argues that it is appropriate policy to set an uncollectibles rate that encourages residential customers to enter the competitive market. (*Id.*, pp. 10-12) Simply put, this is a more politically correct way to say that Dominion wants non-residential service providers to subsidize residential service providers through the discount rates of Rider PORCB. RESA is not aware of any public policy that supports transforming this RES service into an income redistribution mechanism among RES service providers as suggested by Dominion. Keep in mind that if a RES serving residential customers is subsidized under Rider PORCB it does not have to pass along any such subsidy-created savings to those residential customers. At any rate, this argument was fully refuted in RESA's Initial Brief on Rehearing at pages 11-12. It suffices to say here that a policy decision which violates principles of cost causation and results in an unjustified subsidization, as well as under-recovery of ComEd's uncollectible costs from the customers responsible for such costs, does not become good policy simply because it encourages RESs to serve residential customers under Rider PORCB. (RESA Ex. 1.0 on Rehearing, p. 6)

Fourth, Dominion argues that the use of a single blended rate has not discouraged RESs from using Rider PORCB for non-residential customers. (Dominion In. Br., pp. 12-13) This argument, too, was fully refuted in RESA's Initial Brief at pages 8-9. Dominion attempts to support this argument with an inappropriate comparison—the ratio of the number of residential

customers served under Rider PORCB to total residential customers and the ratio of the number of eligible non-residential customers to total non-residential customers. This comparison simply proves that the number of residential customers being served by RESs is small and that the number of non-residential customers being served under Rider PORCB is also small. The relevant comparison was offered by RESA in this proceeding, which showed that the most recent information available demonstrates that the use of a single uncollectible rate has discouraged the enrollment of non-residential customers under Rider PORCB. As of May 31, 2011, there were 21,276 residential customers taking service from a RES and 19,359, or 91%, of those customers were taking service under Rider PORCB. In contrast, as of May 31, 2011, there were 63,823 eligible (Watt Hour Delivery, Small Load Delivery, and Medium Load Delivery) non-residential customers taking service from a RES, but only 1,738, or 2.7%, were taking service under Rider PORCB. (RESA Ex. 2.0 on Rehearing, p. 7)

Fifth, Dominion's claims that the approval of separate uncollectibles rates for residential and non-residential customers would conflict with Section 16-118 (c) of the Public Utilities Act. (Dominion In. Br., p. 13) The only basis for this claim is that the Public Utilities Act uses the term "discount rate" rather than "discount rates". This argument essentially would deprive the Commission of any discretion to establish appropriate rates that reflect the significant cost differences related to these two different customer groups and should be rejected by the Commission. Moreover, Dominion's argument is inconsistent with the Illinois General Assembly's intention that POR/UCB programs, like ComEd's Rider PORCB, be available for RESs serving non-residential customers. Section 16-118 (c) requires ComEd to give RESs the option to have ComEd purchase their receivables not only for residential customers, but for non-residential customers with a non-coincident peak demand of less than 400 kilowatts. The

Commission's amended decision to use a single, blended uncollectible rate results in a discount rate that is higher than historical uncollectibles for non-residential customers and renders this legislative demarcation point irrelevant and rendering this RES option illusory. (RESA Ex. 1.0 on Rehearing, p. 9) This is demonstrated by the extremely low participation rate (2.7%) by eligible non-residential customers in Rider PORCB, as cited above.

VI. RESPONSE TO NEMA

NEMA, which did not sponsor a witness in the rehearing phase of this proceeding, basically repeats some of the arguments used by Dominion, arguments which have been refuted above. However, NEMA falls short of making any recommendation. Rather, it simply concludes that it "urges the Commission to consider the totality of the POR program elements that will directly impact the usefulness of the POR program to suppliers currently serving or considering serving residential consumers in the ComEd service territory and the impact of POR program design on residential consumer migration". (NEMA In. Br., p. 4) Conspicuously absent from NEMA's position is any mention of the cost impact to RESs serving non-residential customers under Rider PORCB caused by providing a rate tilt against RESs that use that Rider to serve non-residential customers. RESA does support "considering the totality" and believes that omitting an entire group of RES and their customers from consideration (or worse, have them subsidize the others) is quite the opposite. If NEMA, like Dominion, is basically arguing that the Commission should establish a single uncollectible rate in order to subsidize potential RESs that may seek to primarily serve residential electric customers, that argument has been refuted above.

VII. CONCLUSION

The Initial Briefs submitted in this proceeding overwhelming demonstrate that the Commission should revert to its decision in the Final Order which utilizes separate discount rates that reflect the historical uncollectible cost differences that are caused by both customer groups. The arguments offered by Dominion, the only party in this proceeding to advocate retention of the single, blended uncollectible rate, are self-serving, founded on questionable public policy and unpersuasive.

Respectfully submitted,

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NOTICE OF FILING

Please take note that on June 27, 2011, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Reply Brief On Rehearing of the Retail Energy Supply Association in this proceeding.

Dated: June 27, 2011

/s/GERARD T. FOX
Gerard T. Fox

CERTIFICATE OF SERVICE

I, Gerard T. Fox, certify that I served copies of the foregoing Reply Brief On Rehearing of the Retail Energy Supply Association, upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on June 27, 2011.

/s/ GERARD T. FOX
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